IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 322 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI BAVBHAI KATHI & 3 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1 - 4.
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/11/2006

ORAL JUDGMENT

1. The appellants, four in numbers, are before this Court being aggrieved by judgment and order dated 16.3.1994 in Sessions Case No. 50 of 1988 by the learned Additional Sessions Judge, Amreli, whereby the accused- the appellants herein are convicted, for

an offence under Section 332 read with Section 149 of the Indian Penal Code and awarded sentence of one year's simple imprisonment, fine of Rs. 200/- and, in default, one month's simple imprisonment.

Whereas accused Nos. 1 and 2 were convicted for an offence under Section 148 of the Indian Penal Code and were awarded six months' simple imprisonment, fine of Rs. 100/- and, in default, 15 days' simple imprisonment.

Besides, accused Nos. 3 and 4 were convicted for an offence under Section 147 of the Indian Penal Code and were awarded simple imprisonment of three months, fine of Rs. 100/- and, in default 15 days, simple imprisonment. The learned Additional Sessions Judge was pleased to order that the substantial sentences shall run concurrently.

2. Mr. Y.S. Lakhani, learned advocate for the appellants, has placed on record a death certificate of appellant No.1 herein- Shri Manubhai Bavbhai Kathi. He has expired on 24.7.2003. That being so, the appeal does not survive so far as appellant No. 1 is concerned.

3. The learned advocate for the appellants pressed the appeal for rest of the appellants.

4. The facts of the case are that, on the day of incident, i.e. 6.12.1986, at around 3.30 p.m., in

the fields of village Lalavadar of Taluka District Amreli, accused armed with deadly weapons indulged in rioting and committed offence under Sections 147, 148 and 149 of the Indian Penal Code. It is also the case of the prosecution that all the accused interrupted the complainant- PSI- public servant in discharging his duties. They abused in filthy language the police personnel and caused hurt to PSI Shri Kadel- complainant and, thus, committed offence under Sections 332, 504, read with Section 149 of the Indian Penal Code.

The accused were charged with offence under Section 307, read with Section 149 of the Indian Penal Code, but, they are acquitted of the same. They are also acquitted of the charge under Section 504 read with Section 149 of the Indian Penal Code.

Accused No. 5- Harijan Harji Mangabhai was acquitted of all the charges, viz. under Section 332 read with Sections 149, 147 and 148 of the Indian Penal Code holding him innocent.

5. It is the case of the prosecution that, on 6.12.1986, PSI Shri Kadel, serving in the 'Task Force' of District Amreli, had filed a complaint at Amreli City/Rural Police Station stating that:-

He had received an information to the effect that Kathi Manu Bav and his brothers of village Lalavadar are indulging in preparing illicit liquor

and they have buried the same in their field. The complainant took a person from Task Force, who had earlier raided that field. The panchas were called, they were explained the matter, panchnama was drawn and, thereafter, in a police vehicle, bearing Registration No. GAO-2261, alongwith Head Constable Shri Balkrishna Manilal, police constable Ratansinh, police constable Udaysinh, armed constable Shri Mansukh Duda and Bhikhudan Hardan alongwith panch, had started at 2.00 p.m. from Amreli. They had gone to village Lalavadar, in the field of Kathi Manu Bav, near village Dalma. At the relevant time, Kathi Manu Bav, Kathi Hada Bav, Jaita Bav and Vala Bav alongwith an unknown person were present there. They were busy with agricultural work (Tal Khervanu kam karta hata). The police party called Manu Bav and informed him about the information, received by them that, his field is to be raided. Thereafter, keeping him (Manu Bav) together, started the investigation. Complainant- PSI Shri Kadel, head constable Shri Balkrishna, panch Mansukhlal Nathumal Sindhi and Manu Bav were investigating on one side of the field, whereas, the other police persons were investigating on the other side of the field.

At that time, at around 3.30 p.m., accused Kathi Hadabhai, Jaitabhai, Valabhai and one unknown person- four in number, armed with various weapons, came to the complainant. Kathi Hada Bav was armed with (kadiyadi-lakdi) stick, Vala Bav was armed with an axe, Jaitabhai was armed with a 'Kodali' and unknown

person was carrying 'khampadi'. Of them, Vala Bav had come to the complainant and started abusing in filthy language. He told the complainant that 'you are out to harass us, you only had implicated my brother in the 'loot' case of Mota Gokharvada and Mota Devadiya. The complainant tried to pacify them. At that time, Manu Bav took out a knife alongwith cover from his shoes. Thereafter, he took out the knife from the cover and tried to assault the complainant. Head Constable Balkrishna seeing this snatched the knife from him. At that time, accused with their respective weapons assaulted. The complainant was having a hockey stick with him, he received the blows on the stick, as a result of that hockey stick was broken into pieces. Head Constable (Balkrishna) intervened. Manu Bav caught hold of the complainant and tried to snatch the revolver from holster (leather cover for housing the revolver). The complainant received injuries on both his hands, right shoulder and also in the head. The complainant got himself freed from Manu Bav and asked the accused by taking out his revolver to stop beating. Despite that, Kathi Hada Bav gave him a blow with a stick on his back. The complainant fired his revolver in the air, still the accused continued the assault on the complainant. The complainant second time fired in the air, still the accused continued to assault him. The complainant having felt his life in danger, aiming at the lower limb of the accused, fired four rounds. This caused an injury in the leg of Manu Bav and he fell down. Meanwhile, the other police personnel came running

and they loaded their rifles. On doing so, four accused with their weapons ran away towards village Dalma. The complainant himself took Manu Bav in a Government vehicle to Government Hospital at Amreli and admitted him as an indoor patient. The complainant registered a complaint at Civil Hospital, Amreli with Amreli City PSI.

6. PSI Shri Chauhan, who had taken the complaint of PSI Shri Kadel in Amreli Police Station, sent the same to register in Amreli Rural Police Station. The same was registered by head constable Vijayaben, who was in-charge of PSO of Amreli Rural Police Station who in turn entrusted the same to PSI Shri Vaghela for investigation. PSI Shri Vaghela recorded the statement of the complainant, drew a panchnama of the body of the complainant, recorded the statement of witnesses, drew a panchnama of the scene of offence, obtained the medical certificate of the injuries sustained by the complainant, took the knife in his possession produced by witness Shri Balkrishna after drawing panchnama.

The report was made before the learned Chief Judicial Magistrate, Amreli for an offence under Section 307 of the Indian Penal Code. Further investigation was taken over by CPI Shri Jadeja, who, later on, filed a chargesheet in the Court of Chief Judicial Magistrate, Amreli (CPI Shri Jadeja has expired).

7. The learned Chief Judicial Magistrate, Amreli made available the police investigation papers to the accused. The accused stated before the learned Chief Judicial Magistrate that they want to engage an advocate at their own expense. The learned Chief Judicial Magistrate, Amreli, having found that it is the Sessions Court who has the jurisdiction to try the case, committed the case to the Court of Sessions under Section 209 of the Code of Criminal Procedure. That being so, the accused appeared before the Court of Sessions for trial.

8. The learned Sessions Judge ascertained that the papers of police investigation are supplied by the learned Chief Judicial Magistrate, Amreli and that an advocate is engaged for the defence at their own expenses, heard learned advocate Shri J.G. Raval for accused Nos. 1 to 4, learned advocate Shri Bagthaliya for accused No.5 and learned APP Shri Vadera for framing the charge. On 8.12.1992, vide Exh. 1, charge was framed.

9. The case of the accused is that they have not committed any offence. Their further case is that when accused No.1 Manu Bav was at the bus stand in Amreli City, he was apprehended by Shri Kadel and was brought to village Lalavadar in his vehicle. He was brought to the field where his brother Jaita was carrying on agricultural operation (tal kherto hato). There, PSI had a quarrel with Bharwads and as accused No.1 apprehending that he will be beaten, he

tried to escape and, at that time, Shri Kadel fired at him. His brother Jaita also tried to escape seeing that Shri Kadel fired at him also. It is a specific case of the accused that, except them, no other accused were present still a false case is filed against them.

10. In this case, the prosecution has examined the following witnesses:

PW Nos.	Name of witnesses	Particulars	Exhibit Nos.
01	Ganpatlal Balmukund Kadel	Injured complainant	12
02	Mansukhlal Nathumal	Panch	15
03	Lalitbhai Kanjibhai	Panch	17
04	Osmanbhai Umarbhai	Panch	18
05	Balkrishna Manilal	Head Constable (eye witness)	27
06	Dr. Chandresh Chandulal Kothari	Medical Officer, who examined the complainant at Civil Hospital, Amreli	28
07	Jayanti Manji	Panch	30
08	Ratansinh Bhaijibhai	Police Constable (Amreli Task Force)	35
09	Vijayaben	In-charge PSO (Amreli Rural Police Station on 6.12.1986)	36
10	Udaysinh Bhupatsinh	Police Constable (Amreli Task Force)	40

PW Nos.	Name of witnesses	Particulars	Exhibit Nos.
11	Mansukhbhai Dudabhai	Police Constable (Armed police Constable)	43
12	Bhikhudan Hardan	Armed police constable	44
13	Shilubhai Amadbhai	Driver	45
14	Ranjitsinh Jugaji Vaghela	Investigating Officer	46

The prosecution has relied upon the following documents:

Exhibit Nos.	Particulars
13	Complaint
19	Body panchnama of the complainant
22	Arrest panchnama of Jaita Bav
23	Arrest panchnama of Kathi Vala Bav
29	Medical certificate- Civil Hospital, Amreli for the injury sustained by complainant Shri Kadel
31	Discovery panchnama of Kodali
32	Discovery panchnama of axe
33	Arrest panchnama of Hada Bav Kathi and Harijan Harji Manga
37	Complaint filed by Valabhai (at Amreli Police Station at 6.40 p.m. on 6.12.1986)
47	Panchnama of pieces of hockey, stick and knife produced by Head Constable Balkrishna Manilal
49	Writen statement of accused No.1

11. The learned advocate for the appellants invited attention of the Court to the evidence of the complainant- PW 1 Exh. 12- injured complainant. He

also invited attention of the Court to the evidence of Balkrishna Manilal Mehta, Head Constable, PW 5 Exh.27, who is stated to be with the injured complainant all throughout and is also attributed a role of having snatched the knife from accused No.1. The deposition of PW 8 Exh. 35, PW 10 Exh.40, PW 11 Exh.43, PW 12 Exh.44, PW 13 Exh.45 were read at *extenso*.

PW 10, PW 11 and PW 12 are the police personnel but still have not supported the case of the prosecution. They are declared hostile.

PW 5, who is an important witness next after the injured complainant, is though not declared hostile, does not support the injured complainant. In absence of that, the case put forward by the prosecution is not found probable.

A very important aspect of the case is, 'the nature of injury' sustained by the injured complainant. It creates doubt, which is not successfully dislodged. The injuries sustained are such that they are either self inflicted or at least not so grave, which will justify the use of the service fire arm. By which an injury is caused for which accused No.1 was required to take treatment for a period more than a month as is stated in the written statement.

12. In this regard, the deposition of Dr. Chandresh Kothari- PW 6 Exh. 28 is material. In para 2 of the

deposition of the doctor, the injuries sustained by the injured complainant are set out. All these injuries are, 'simple in nature' and cannot be said to be such, which would have 'endangered the life of the injured complainant', forcing him to resort to firing.

In para 3, other injuries, which are noticed on the person of the injured complainant, are set out, those too are of 'very simple in nature'. The injured complainant was admitted in the hospital and was discharged on 8.12.1986 (incident is that of 6.12.1986 afternoon).

In para 7, the doctor has deposed that, 'the injuries were simple'. He has stated that, 'none of the injuries were found bleeding'. The doctor has opined that, if the weapon, like axe (article 10), is used, it is bound to cause an injury, which will bleed. Similar is the opinion given about the weapon 'Kodali' (article 9) and about 'Khampali' (Article 12).

At this juncture, it is important to note that the doctor has stated in para 8 that on the same date, he had given treatment to Manu Bav who had sustained bullet injury in his leg, and had referred him to Ahmedabad. He states that he will not be able to say without seeing the case papers as to whether the injury was serious but he states that it is only when injuries are serious, patient is referred to

Ahmedabad. He has also deposed that he had also examined Jaita Bav, who too had sustained a bullet injury in the calf and on the knee. This shows that injuries sustained by the accused were more serious than the injuries sustained by the complainant.

So far as the complaint filed by Valabhai Bavbhai is concerned- Exh. 37, nothing is coming out as to what happened, except a very cursory reference in the deposition of the injured complainant that he has come to know that same is rejected.

13. So far as the deposition of the injured complainant- PW 1 Exh. 12 is concerned, there is material contradiction when it is compared with the deposition of Shri Balkrishna Mehta- PW 5 Exh. 27.

The injured complainant has stated that Manu Bav (accused No.1) took out a knife with cover and, after taking out the knife from the cover, assaulted him. But, in the meantime, Head constable Shri Balkrishna snatched the knife. On this aspect, Balkrishna (PW 5) has stated that, while he alongwith PSI Kadel (injured complainant) and panch Mansukhbhai were investigating on one side of the field, there was hustle and exchange of abuses. The accused were making hustle and were abusing, at that time, many other persons had come there. He did not know them. The persons came from the adjoining field (khedkam). Accused Manu Bav and PSI Kadel were 'bathambath' (scuffle) and he set them apart. Then PSI Kadel

fired. He says that as PSI was assaulted, he has resorted to firing. He has further stated that many persons were present and, therefore, who assaulted, he does not know. He says that Manu Bav had sustained injury by firing resorted by PSI Kadel. Besides, Jaita Bav had also sustained bullet injury.

In a later part of the same para, he states that when accused No.1- Manu Bav and PSI Kadel were having scuffle, he noticed a knife at the waist of Manu Bav which he took away. He further states that the knife is produced before the I.O. He further states that he had taken away the knife so as to see that Manu Bav was not able to use it.

Thus, there is material contradiction between two witnesses, who are present and are describing the same incident. The injured complainant says that accused No.1 had took out the knife with cover and made an assault on the injured complainant, but is intercepted by Balkrishna Mehta-Head Constable. Whereas, Balkrishna Mehta described the incident in altogether in a different manner. He nowhere refers to accused No.1 having taken out the knife with cover, having taken out the knife from the cover and then assaulting the injured complainant. That being so, the entire story of the prosecution becomes doubtful. It appears that the injured complainant has tried to implicate the present accused in a serious offence as his ego was hurt. May be that he was manhandled by a crowd in a village.

14. The learned Judge has not discussed anything about Exh. 37 and Exh. 49. The story put forward by the accused in the defence is also found to be equally probable and the same ought to have been taken into consideration by the learned Judge while appreciating the evidence led before him.

15. Accused No.1 has expired during pendency of this appeal. In the deposition of the injured complainant and star witness Balkrishna Mehta, main thrust was on accused No.1. In his absence that thrust looses its impact.

16. False implication and an attempt of aggravating the charge is apparent on the part of the prosecution, inasmuch as after having implicated all the four brothers, to reach to the figure of five, they said there was 'one unknown person'. When they (the police personnel) were on the scene of offence for quite some time and they knew four brothers, they could have known about that 'unknown person' also. He is acquitted of all the offences by the learned Judge and it is only accused Nos.1 to 4 are convicted for the offence as aforesaid.

16. Having found the evidence not inspiring the confidence and reliable enough to record conviction against the accused, judgment and order of the learned Additional Sessions Judge, Amreli dated 16.3.1994 passed in Sessions Case No. 50 of 1988 is

quashed and set aside. The bail bond is cancelled. The appeal is allowed.

Sd/-

(RAVI R. TRIPATHI, J.)

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